

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Trial Court Presiding Judges Advisory Committee  
Hon. Frederick Paul Horn, Chair  
Court Executive Officers Advisory Committee  
Mr. Alan Slater, Chair  
Susan R. Goins, Senior Attorney, 415-865-7990

DATE: August 25, 2003

SUBJECT: Acceptance of Gifts to the Judicial Branch (amend Cal. Rule of Court, rule 989.7); (Action Required)

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Issue Statement

Under existing rule 989.7 of the California Rules of Court, only the Chief Justice or his designee is authorized to accept gifts to the judicial branch or an individual court. There is a risk of improprieties and disqualifications when judicial officers accept gifts on behalf of courts.

Recommendation

The Trial Court Presiding Judges Advisory Committee and the Court Executive Officers Advisory Committee recommend that the Judicial Council amend rule 989.7 of the California Rules of Court to give the Administrative Director of the Courts the authority to accept gifts, and to delegate authority to accept gifts to executive officers, administrators, and the Director of the Finance Division of the AOC. The proposed rule is attached at page 5.

Rationale for Recommendation

Existing rule 989.7 governs the acceptance of gifts made by or in favor of any article VI entity, including superior and appellate courts. It provides that the Chief Justice or the Chief Justice's designee may accept such a gift "if the gift and any terms and conditions are found to be in the best interest of the State."

As an interim measure, pending this rule amendment, on August 16, 2002, the Chief Justice delegated the authority to accept gifts to the Administrative Director of the Courts. The delegation authorized the Administrative Director to delegate the

authority to accept gifts on behalf of each court to the court's executive officer or clerk/administrator, under guidelines established by the AOC. On February 13, 2003, the Administrative Director delegated authority to accept gifts to the executive officer of each superior court to permit superior courts to accept gifts, if appropriate, while this proposed rule amendment is being considered for adoption. The amendment would establish by rule the Chief Justice's delegation of authority to the Administrative Director and would specify the individuals at the trial and appellate courts to whom the Administrative Director may delegate the authority to accept gifts.

Superior courts on occasion receive offers of gifts. The former practice in some counties was to seek approval from the county governing body for gifts valued in excess of \$10,000, under section 25355 of the Government Code. This code section, governing gifts made in favor of the *county*, no longer applies.<sup>1</sup>

Currently, a trial or appellate court has two options for handling gifts: (1) the court may request that the Chief Justice accept a specific gift on behalf of the court or (2) the court may request that the Chief Justice appoint a designee who may act generally to accept gifts on behalf of the court. Rule 989.7 provides no criteria for determining who is the appropriate person to act as a designee authorized to accept gifts on behalf of a trial court.

There are statutory and ethical constraints on the acceptance of gifts by judicial officers.<sup>2</sup> Even when a judge accepts a gift on behalf of the court rather than on his or her own behalf, there is a risk of actual or apparent impropriety and a significant risk of subsequent disqualifications.<sup>3</sup> Delegating authority to the Administrative Director of the Courts to accept gifts and, under appropriate circumstances, authorizing the Administrative Director to delegate that authority to nonjudicial officers of individual courts, would reduce the risk of impropriety and possible disqualification of judicial officers arising from the acceptance of gifts.

Although the presiding judge of the trial court is ultimately responsible for all fiscal matters,<sup>4</sup> as discussed above, the presiding judges are subject to both statutory and

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<sup>1</sup> A superior court is a judicial entity created under article VI of the state Constitution (Cal. Const., art. VI, § 4) and, as such, it is separate and distinct from a county created under article XI. (See Cal. Const., art. XI, § 1.) See also Stats. 1997, ch. 850, § 2(a) [legislative finding in Trial Court Funding Act of 1997, providing that the state judiciary is a "separate and independent branch of government"]; Gov. Code, § 77100(a) [legislative finding that trial proceedings are a "function of the judicial branch of state government under Article VI"]; *Sacramento & San Joaquin Drainage Dist. v. Superior Court* (1925) 196 Cal. 414, 432 ["[t]he superior courts . . . while located and functioning in the several counties . . . are not local or county courts, but constitute a system of state courts . . . vested with exercising the judicial power of the state under . . . section 1 of article 6 of the state Constitution"].

<sup>2</sup> See Code Civ. Proc., § 170.9; Cal. Code Jud. Ethics, canon 4D(5).

<sup>3</sup> See, e.g., Cal. Code Jud. Ethics, canons 2(1), 4D(1) and (4).

<sup>4</sup> See Cal. Rules of Court., rule 6.603(c)(6).

ethical constraints relating to the acceptance of gifts. All judicial officers are subject to these limitations.

The most suitable candidates for acceptance of gifts to the courts are superior court executive officers and clerk/administrators of the Courts of Appeal, because of their administrative responsibilities for court operations. The executive officer is directly responsible for the court's fiscal management, including revenues and expenditures that derive from the acceptance and use of gifts made to the court.<sup>5</sup> For the same reasons, a clerk/administrator of a Court of Appeal is a more appropriate designee than the administrative presiding justice,<sup>6</sup> and the clerk/administrator of the Supreme Court is more appropriate than the Chief Justice.

The proposed amendment would make the rule applicable only to the courts, the Judicial Council and the Administrative Office of the Courts. Rule 989.7 currently provides that the Chief Justice may accept gifts on behalf of "any agency provided for in article VI of the Constitution." Article VI entities include—in addition to superior courts, Courts of Appeal, the Supreme Court, the Judicial Council, and the Administrative Office of the Courts—the Commission on Judicial Appointments (§ 7), the Commission on Judicial Performance (§ 8), and the State Bar of California (§ 9). The report recommending adoption of rule 989.7 did not address whether each of the article VI entities should be included or why all were included. However, the Administrative Director of the Courts does not oversee or serve the Commission on Judicial Appointments, the Commission on Judicial Performance, or the State Bar, and thus these entities are not included in the amended rule. These entities are not the appropriate subject of regulation by the Judicial Council. They may develop their own policies or rules for the acceptance of gifts.

#### Alternative Actions Considered

One alternative is to leave the rule unchanged. The Chief Justice would continue to have authority to accept gifts and the Administrative Director would continue to have concurrent authority under the Delegation of Authority executed in August 2002. Another alternative is to delegate authority to accept gifts by means of an order. A rule is preferable to an order, however, because it makes clear the proper procedure for acceptance of gifts.

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<sup>5</sup> See Cal. Rules of Court., rule 6.610(c)(2).

<sup>6</sup> See Cal Rules of Court, rule 76.1.

### Comments From Interested Parties

The amended rule on acceptance of gifts was circulated in the regular spring 2003 cycle, from April 17, 2003 through July 1, 2003.

A total of five comments were received. The commentators include a clerk/administrator and an assistant clerk/administrator of a court of appeal, a deputy executive officer of a superior court, the president of a local bar association, and an attorney.

Ms. Eve Sproule, clerk/administrator of the Court of Appeal, Fifth Appellate District, believes that in the absence of written guidelines on the acceptance of gifts, it is inappropriate to delegate authority for their acceptance to a court administrator. She also believes that if it is inappropriate for a judicial officer to accept gifts it is inappropriate for an administrator, who serves at the pleasure of the presiding judge or justice, to accept gifts.

Ms. Kay Frauenholtz, assistant clerk/administrator of the Court of Appeal, Fifth Appellate District, similarly believes that the proposed amendment should authorize the Administrative Director of the Courts—rather than a court administrator—to accept gifts under clearly established guidelines.

Currently, there are no guidelines established. As guidelines are developed, they will be presented to court executives and presiding judges for review. While specific guidelines will be helpful, the proposed rule itself provides general guidelines, requiring that “the gift and any terms and conditions must be in the best interest of the State.”

Each of the other three commentators agreed with the proposal without any modifications. The Trial Court Presiding Judges Advisory Committee and the Court Executive Officers Advisory Committee do not believe that the rule should limit the authority to accept gifts to only the Administrative Director and thus did not revise the rule in response to comments received from Ms. Sproule and Ms. Frauenholtz.

A chart containing the comments is attached at page 6.

### Implementation Requirements and Costs

There are no implementation costs to this proposal. If approved, the amended rule on acceptance of gifts will take effect on January 1, 2004.

Attachments

Rule 989.7 of the California Rules of Court is renumbered as rule 6.102 and amended, effective January 1, 2004, to read:

**DIVISION 11**  
**CHAPTER 1**

**Rule ~~989.7~~ 6.102. Acceptance of gifts**

- (a) ~~The Chief Justice or the Chief Justice's designee~~Administrative Director of the Courts may accept on behalf of any~~agency provided for in article VI of the Constitution~~entity listed in (b) any gift of real or personal property if the gift and any terms and conditions are found to be in the best interest of the State. Any applicable standards used by the Director of Finance under Government Code section 11005.1 may be considered in accepting gifts.
- (b) The Administrative Director may delegate the authority to accept gifts to the following, under any guidelines established by the Administrative Office of the Courts:
  - (1) The executive officer of a superior court, for gifts to the superior court;
  - (2) The clerk/administrator of a Court of Appeal, for gifts to a Court of Appeal;
  - (3) The clerk of the Supreme Court, for gifts to the Supreme Court; and
  - (4) The Director of the Finance Division of the Administrative Office of the Courts, for gifts to the Judicial Council and the Administrative Office of the Courts.

**SPR03-52**  
Acceptance of Gifts  
(amend Cal. Rules of Court, rule 989.7 and renumber it as rule 6.102)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Ms. Linda Finn Deputy Executive Officer Superior Court of California, County of Ventura	A	N	None	None required.
2.	Ms. Kay Frauenholtz Assistant Clerk/Administrator Court of Appeal	AM	N	The amendment should authorize the Administrative Director of the Courts to make the decision to accept gifts, using clearly established guidelines. Since the court administrators and executive officers work at the pleasure of the presiding judge or justice, it would not be appropriate to delegate that authority.	The committees believe that the rule should permit the Administrative Director to delegate authority to accept gifts to others specified in the rule and that those specified are the most appropriate individuals to accept gifts since they are not judicial officers. No change.
3.	Mr. Robert Gerard President Orange County Bar Association	A	Y	None	None required.
4.	Mr. Thomas A. Pistone	A	N	None	None required.
5.	Eve Sproule Clerk/Administrator Court of Appeal, 5th Appellate District	AM	N	In the absence of established guidelines, it would appear inappropriate for the Administrative Director of the Courts to delegate authority to a court administrator. If it is inappropriate for the judicial officer to accept gifts it would also seem inappropriate for an administrator, who works at the pleasure of the presiding judge or justice, to accept gifts.  It is the current policy of the Fifth Appellate District to accept no gifts.	The committees believe that the rule should permit the Administrative Director to delegate authority to accept gifts to others specified in the rule and that those specified are the most appropriate individuals to accept gifts since they are not judicial officers. No change.